SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 254

OTIS & CO.,

Appellant,

vs.

THE UNITED STATES OF AMERICA, THE PULLMAN COMPANY, PULLMAN-STANDARD CAR MANUFACTURING COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

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Comes now Otis & Co., appellant herein, and concurrently with the presentation of its petition for the allowance of an appeal from the District Court of the United States for the Eastern District of Pennsylvania by a specially constituted three-judge court under Title 15, Section 28 of the United States Code, to the Supreme Court of the United States, herewith presents this statement disclosing the basis upon which the Supreme Court of the United States has jurisdic-

tion upon such appeal to review the order and decree from which said appeal is taken.

I. Statute Sustaining Jurisdiction

The statutory provision believed to sustain appellate jurisdiction is Title 15, Section 29 of the United States Code, and particularly the following provisions thereof:

> "In every suit in equity brought in any district Court of the United States under Section 1-7 or 15 of this title, wherein the United States is complainant, an appeal from the final decree of the District Court will lie only to the Supreme Court and must be taken within sixty days from entry there; . . ."

II. United States Statute Involved

The United States statute involved is the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, 50 Stat. 693 (U. S. C., Title 15, Sections 1, 2 and 4), known as Sections 1, 2 and 4 of the Sherman Act, and particularly the following provisions thereof:

> "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . ."
>
> "Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . ."
>
> Section 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such

proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

III. Date of Final Order and Decree and Application for Appeal

The final order and decree appealed from was made and entered on the 4th day of January, 1946, and the application for appeal herein is presented this 4th day of March, 1946.

IV. Nature of the Case, Rulings of the Court, and Substantial Questions Involved

This suit was brought by the United States charging violations of Sections 1 and 2 of the Sherman Antitrust Act. The principal corporate defendants are Pullman Incorporated, a holding company, and its wholly-owned subsidiaries, The Pullman Company and the Pullman-Standard Car Manufacturing Company. In its opinion, dated April 20, 1943 (50 Fed. Supp. 123), the court sustained the Government's charges.

In a Judgment, entered May 8, 1944, the court ordered a complete and perpetual separation of the sleeping car business (operated by The Pullman Company) from the business of manufacturing cars (conducted by the Pullman-Standard Car Manufacturing Company) and the complete and perpetual separation of the ownership and control of each business from the ownership and control of the other, irrespective of who owns or controls such business. Provisions of this Judgment also sought to restore competition in both businesses.

The court permitted Pullman Incorporated to make an election as to which business would be sold. They elected to sell the sleeping car business operated by The Pullman Company. Otis & Co., appellant herein, filed its motion to intervene and its petition for approval of its offer to purchase The Pullman Company with the court on August 27, 1945. An order granting intervention was entered August 29, 1945. Otis & Co.'s offer was the only unqualified offer before the court at the time of the hearings held on November 5 and 6, 1945, on petitions for approval of offers to purchase the stock of The Pullman Company. There were three other offers before the court, including that of a combination of railroads doing 95 per cent of the passenger-carrying business of the United States.

The United States Government opposed sale to the railroad group on the following grounds: (1) sale of the sleeping car business to the railroads would merely substitute a new monopoly for the one condemned by the court; (2) it would eliminate all competition between the railroads as to both services and types of facilities; (3) it would perpetuate the existing manufacturing monopoly; (4) it would give the railroads an additional monopoly on a competing nationwide system of transportation; and (5) it would result in discrimination against the weaker roads.

The United States Government recommended to the court that it approve the offer of Otis & Co., appellant herein, as the independent purchaser best qualified to carry out the purpose of the court's opinion and judgment and to insure the greatest competitive expansion of the sleeping car industry.

The court, however, approved the purchaser selected by defendants, Pullman Incorporated, namely, the railroad buying group. It is from the final order and decree approving the sale of the stock of The Pullman Company to a combination of railroads that this appeal is taken.

There are involved in this appeal substantial questions in the enforcement, operation, and execution of Sections 1 and 2 of the Sherman Act. Such questions are indicated in the Government's objections to the sale of the stock of The Pullman Company to the railroad buying group, set forth above, and its recommendation that the offer of Otis & Co., appellant herein, be approved. A basic question is whether the court under the facts in this case substituted another unlawful monopoly for the monopoly condemned by the court in its decision and judgment. Another substantial question is whether the court had the power and the duty to select the purchaser, independent of any direct or indirect relationship with defendants, which offers the greatest competitive expansion of the sleeping car industry.

Reference is respectfully made to copies of the opinions of the district court delivered in this cause, together with the court's findings of fact and conclusions of law, which are appended to the jurisdictional statement of the Government, heretofore filed herein.

It is respectfully submitted that this Court has jurisdiction of this appeal under Title 15, Section 29 of the United States Code (see *United States* v. *California Cooperative Canneries*, 279 U. S. 533, 558 (1929)), and that the questions presented are substantial.

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